

14:53:28

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3

4

- - - - - X
5 UNITED STATES OF AMERICA) 20CR6032
)
)

6 vs.

7 MICHAEL J. TYO, Rochester, New York
) February 16, 2022
 Defendant. 3:00 p.m.
8 - - - - - X

9 **MOTION TO WITHDRAW PLEA/ORAL ARGUMENT**
All parties appeared using the Zoom for Government
Platform

10

11

12 TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID G. LARIMER
13 UNITED STATES DISTRICT JUDGE

14

TRINI S. ROSS, ESQ.
United States Attorney
BY: KATELYN M. HARTFORD, ESQ.
Assistant United States Attorneys
16 100 State Street
Rochester, New York 14614

17

18 MICHAEL P. SCIBETTA, ESQ.
The Scibetta Law Office
2000 Winton Road South
19 Building 4, LL5
Rochester, New York 14614

20

J. Finucane, USPO

21

22

23

24 **COURT REPORTER:** Karen J. Clark, Official Court Reporter
Karenclark1013@AOL.com
100 State Street
25 Rochester, New York 14614

1 USA VS. M. TYO
2
3
4 * P R O C E E D I N G *
5
6
15:34:47 7
15:34:47 8
10:18:30 9 THE COURT: Good afternoon, all. Mr. Tyo,
15:03:35 10 good afternoon.
15:03:36 11 THE DEFENDANT: Good afternoon, your Honor.
15:03:38 12 THE COURT: Can you hear me all right?
15:03:39 13 THE DEFENDANT: Yep. Can you hear me?
15:03:41 14 THE COURT: I can. Everybody just keep
15:03:44 15 their voices up when we speak. We do have a court
15:03:48 16 reporter taking matters down. This is not the most
15:03:52 17 ideal format, but with the Covid and other health
15:03:59 18 issues, it's what we presently have to use.
15:04:04 19 So, the matter is scheduled for argument on
15:04:14 20 the defense motion to allow Mr. Tyo to withdraw his
15:04:21 21 guilty plea that was entered back in July of 2020. At
15:04:28 22 least I believe that is still on the agenda. When this
15:04:33 23 case originally started out, we had sentencing matters
15:04:36 24 filed and we were pretty close to setting the matter
15:04:39 25 down for sentencing, and I thought the principal issue
15:04:42 was the appropriate sentence. But, in any event, we

1 USA VS. M. TYO

15:04:48 2 have the motion pending.

15:04:51 3 A couple of housekeeping matters I must
15:04:53 4 attend to. First of all, I want to make sure the
15:04:58 5 attorneys consent to proceed in this virtual format.

15:05:08 6 Ms. Hartford, the government agree and Mr.
15:05:10 7 Sciabetta.

15:05:11 8 MS. HARTFORD: Yes, your Honor, the
15:05:12 9 government agrees.

15:05:13 10 MR. SCIBETTA: I do agree, your Honor.

15:05:14 11 THE COURT: All right. And Mr. Tyo,
15:05:17 12 Congress has passed a statute allowing us to have court
15:05:21 13 proceedings in this fashion, but the rules require that
15:05:26 14 I ask you directly if you agree that you can handle
15:05:30 15 argument on this matter today in this virtual format by
15:05:36 16 using the computers?

15:05:37 17 THE DEFENDANT: Yes, your Honor. Is this --
15:05:40 18 are we going to get a decision right now about the
15:05:43 19 motion being accepted or just to progress with it?

15:05:47 20 THE COURT: Most likely, I will just hear
15:05:50 21 argument, and give you a written decision as soon as I
15:05:53 22 can.

15:05:56 23 THE DEFENDANT: Okay. All right.

15:05:59 24 THE COURT: Okay. Did someone leave the
15:06:08 25 meeting? Ms. Clark? No.

1 USA VS. M. TYO

15:06:08 2 COURT REPORTER: I am here, Judge.

15:06:11 3 THE COURT: Well, I do have papers that I

15:06:15 4 have reviewed. The defense motion was just filed

15:06:25 5 January 21st, and I do have the government's response

15:06:31 6 that was filed February 4th. So, I have reviewed those

15:06:39 7 papers. I certainly, I have reviewed the plea agreement

15:06:45 8 and the transcript of the plea proceeding. And, I mean,

15:06:53 9 I reviewed the presentence report before, but that is

15:06:56 10 not really before us. There were some changes in the

15:07:00 11 presentence report, but that is for another day, if

15:07:04 12 necessary.

15:07:07 13 So, I guess, Mr. Scibetta, it is your

15:07:10 14 motion, I guess I would let you proceed first, I think.

15:07:18 15 MR. SCIBETTA: I'll, for the most part, rest

15:07:20 16 on the papers as submitted, Judge. I did have numerous

15:07:24 17 conversations over several months with Mr. Tyo about his

15:07:29 18 intentions to attempt to withdraw his plea. His reasons

15:07:35 19 for that, as you're well aware, I'm substitute counsel

15:07:39 20 on this, so I'm not a first-hand participant in what

15:07:43 21 those conversations between he and prior counsel were,

15:07:47 22 but based upon his representations to me, and his

15:07:52 23 opinions on this matter, he does feel that he was ill

15:07:57 24 informed, and to the point of coerced into taking the

15:08:01 25 plea with threats to be mentally evaluated and sent to

1 USA VS. M. TYO

15:08:06 2 unknown facilities out of state. I've put that in the
15:08:09 3 papers, his affidavit indicates that as well. I have
15:08:14 4 nothing further to add other than what's in the papers
15:08:17 5 at this point.

15:08:20 6 THE COURT: The posture of the case is that
15:08:23 7 Mr. Tyo pleaded guilty. The Court accepted the plea.
15:08:27 8 So the rules require that the burden is on the defendant
15:08:35 9 to show a fair and just reason for withdrawing the plea.
15:08:45 10 The pleas that are taken in court under oath, it's clear
15:08:54 11 that people -- it's not like a buffet, you can't just
15:08:59 12 one day decide you want to plea and the next day not.
15:09:03 13 So, there has to be a good, a fair and just reason. And
15:09:06 14 as the government points out in its response, there are
15:09:11 15 several things that courts can consider in deciding the
15:09:17 16 motion. One is the amount of time that has elapsed
15:09:23 17 between the plea and the request to withdraw. The
15:09:29 18 second is whether there is any claim of innocence. And
15:09:39 19 the third is the potential prejudice to the government
15:09:42 20 by allowing the plea to be withdrawn. And, I guess, Mr.
15:09:48 21 Sciabetta, you may want to comment because it doesn't
15:09:52 22 seem as though Mr. Tyo comes off very well in any of
15:09:56 23 those categories. The papers -- let me just finish here
15:10:01 24 and I'll give you your opportunity.

15:10:02 25 MR. SCIBETTA: Sure.

1 USA VS. M. TYO

15:10:06 2 THE COURT: Certainly, in Mr. Tyo's
15:10:09 3 affidavit, there is no suggestion of innocence, which
15:10:12 4 would be pretty hard to do in light of the colloquy and
15:10:15 5 his admissions under oath as to what he did to several
15:10:19 6 banks. So, you know, that doesn't affect or does not
15:10:25 7 support Mr. Tyo's application here. Second thing is the
15:10:29 8 amount of time that lapsed between the plea and the
15:10:32 9 request to withdraw. The plea was in June, excuse me,
15:10:42 10 July 29th of 2020, and the first there was any
15:10:47 11 indication Mr. Tyo wished to change attorneys or
15:10:54 12 withdraw his plea was almost a year later on June the
15:10:57 13 7th, 2021. And I think as the government pointed out in
15:11:04 14 its brief and the Court is familiar with this, too,
15:11:07 15 there have been many cases that have gone up on appeal
15:11:11 16 where the delay was much shorter than that, four months,
15:11:15 17 five months. I mean, frankly, I wonder if all of this
15:11:18 18 was precipitated by the fact Mr. Tyo got the presentence
15:11:23 19 report, which, as I said, had a Guideline range a little
15:11:26 20 higher than what was anticipated in the plea agreement.
15:11:29 21 Although the government admits now, as I think it must,
15:11:33 22 that they are bound to advocate for the range that was
15:11:36 23 in the plea agreement. And what the Court does, the
15:11:45 24 Court always decides ultimate matter. And prejudice to
15:11:50 25 the government, that is the third factor. The robberies

1 USA VS. M. TYO

15:11:53 2 occurred, you know, many years ago, really. So I think
15:11:59 3 the potential, I don't think anybody has spoken to this
15:12:05 4 directly, is that, you know, you have witnesses and
15:12:09 5 tellers now two or more years later, there might be some
15:12:13 6 prejudice to the government by this time going to trial,
15:12:18 7 which I guess is what Mr. Tyo seems to want to do here,
15:12:22 8 which, you know, if the Court withdraws the plea, unless
15:12:26 9 you work out a different arrangement, we set it down for
15:12:30 10 trial and see what happens, and what the Guidelines
15:12:34 11 might be after a trial.

15:12:36 12 So, Mr. Sciabetta, would you like to comment
15:12:40 13 on any of those matters?

15:12:42 14 MR. SCIBETTA: Sure, Judge. As far as the
15:12:45 15 length between the plea, as the Court is well aware, I
15:12:48 16 believe the plea was in May and there was not a signed
15:12:52 17 plea agreement until November. Part of --

15:12:56 18 THE COURT: The plea was in July, I think.

15:12:58 19 MR. SCIBETTA: Excuse me, July, and not
15:13:00 20 signed until sometime in November. I think that speaks
15:13:05 21 to the break down in communication between then attorney
15:13:12 22 Ciccone and my client now. My understanding is that the
15:13:15 23 reason for his request to have new counsel was a long
15:13:20 24 standing desire to have the plea agreement withdrawn.
15:13:25 25 As his affidavit makes clear, he was not comfortable

1 USA VS. M. TYO

15:13:31 2 with the circumstances and a threat to him as to why he
15:13:37 3 took the plea to begin with.

15:13:39 4 THE COURT: But, again, he can't keep it in
15:13:42 5 his head. He has to tell somebody he wants to withdraw
15:13:45 6 his plea. And that didn't happen for almost a year.
15:13:48 7 And you mentioned that he didn't sign the agreement
15:13:50 8 until November 5th, on November 5th when we had a court
15:13:55 9 appearance.

15:13:56 10 THE DEFENDANT: It was about six months
15:14:00 11 after I signed.

15:14:00 12 THE COURT: Mr. Tyo, you don't speak unless
15:14:03 13 I ask you to speak, okay?

15:14:04 14 THE DEFENDANT: Yes, your Honor.

15:14:06 15 THE COURT: So when he signed the plea
15:14:10 16 agreement, we know why it happened, we did the plea
15:14:14 17 remotely and it was an agreement that counsel and Mr.
15:14:17 18 Tyo would sign it later. But you can look at the fact
15:14:21 19 that he did sign it in November as sort of a
15:14:25 20 reaffirmation that he wanted to plea.

15:14:28 21 MR. SCIBETTA: I think the same threats were
15:14:30 22 made, again, when it came time to sign the document
15:14:35 23 according to my client.

15:14:36 24 MS. HARTFORD: Your Honor, I would like --

15:14:37 25 THE COURT: I know this is difficult because

1 USA VS. M. TYO

15:14:39 2 we have a lot of people here. And I want to make sure
15:14:42 3 Mr. Sciabetta is finished.

15:14:44 4 MR. SCIBETTA: That's fine. I was just
15:14:47 5 addressing that one issue.

15:14:47 6 THE COURT: Okay. I guess you can't dispute
15:14:52 7 the fact that there is no claim here of innocence, which
15:14:55 8 the Courts seem to think is maybe an important factor.

15:15:00 9 MR. SCIBETTA: Well, I think it is an
15:15:02 10 important factor, Judge. But, again, this is not so
15:15:05 11 much about whether he would ultimately agree to some
15:15:08 12 type of a plea. Clearly he has indicated on the record
15:15:12 13 that he did do these events. This is more so bringing
15:15:18 14 to light that he wanted different counsel, a different
15:15:24 15 type of plea due to the break down in the communication
15:15:28 16 between he and Mr. Ciccone and the threats being made to
15:15:31 17 him at the time.

15:15:32 18 THE COURT: So you think he is really
15:15:34 19 looking for a different type of plea.

15:15:36 20 MR. SCIBETTA: Well, I don't think this
15:15:37 21 should necessarily fall on the factor of whether or not
15:15:41 22 he is claiming innocence so much as the fact that he did
15:15:45 23 not get a valid opportunity to negotiate the plea to
15:15:48 24 begin with due to the threats that he should just take
15:15:51 25 it or leave it, so to speak, or face the consequences of

1 USA VS. M. TYO

15:15:56 2 health and issues, evaluations and transportations to
15:16:02 3 some unknown locations, as I understand it.

15:16:07 4 THE COURT: All right. Ms. Hartford, would
15:16:10 5 you like to respond to my comments and Mr. Sciabetta's
15:16:14 6 comments. There may be several factors that the Court
15:16:18 7 has to consider. But those three are factors that the
15:16:23 8 Second Circuit often recites. And the government has
15:16:27 9 carefully set out those elements. Anything else that
15:16:33 10 you want to add, Ms. Hartford?

15:16:35 11 MS. HARTFORD: Just a bit, your Honor. I
15:16:38 12 agree as far as those three factors that the Court set
15:16:42 13 forth and the government outlined in its papers. I will
15:16:46 14 note that while there is, arguably, some prejudice to
15:16:52 15 the government here, and that is one of the factors and
15:16:54 16 that does weigh in favor of the government here, whether
15:16:59 17 or not the government would be prejudiced is only
15:17:02 18 considered if the defendant is able to show a fair and
15:17:07 19 just reason. So, but, regardless, I do think that
15:17:11 20 exists here, and that would also weigh in favor of not
15:17:14 21 allowing the defendant to withdraw his plea. One thing
15:17:18 22 that I outlined pretty thoroughly in my papers, so I
15:17:23 23 won't go into this too much, but the bottom line is that
15:17:27 24 the defendant's new claims here are all contradicted by
15:17:32 25 his own statements at the plea hearing. And the Second

1 USA VS. M. TYO

15:17:35 2 Circuit has plainly held that a defendant's bald
15:17:39 3 statements that simply contradict what he said at his
15:17:42 4 plea allocution are not sufficient grounds to withdraw a
15:17:45 5 guilty plea. So, as to, you know, short comings of his
15:17:48 6 defense attorney, the colloquy established, and your
15:17:51 7 Honor asked him specifically if he had any beef with his
15:17:54 8 lawyer, and if he was satisfied. And he said he didn't
15:17:57 9 have any problems with his lawyer, and he was satisfied
15:17:59 10 with his representation. Furthermore, as far as the
15:18:03 11 mistake in the plea agreement and the facts that the
15:18:05 12 plea agreement calculated a lower criminal history score
15:18:09 13 than the PSR, first of all, that actually benefits the
15:18:13 14 defendant. And he certainly wouldn't be given that
15:18:17 15 opportunity again. And, as the Court mentioned, we're
15:18:20 16 bound by that, so that benefits him. But the plea
15:18:26 17 agreement explicitly states that that is not a ground to
15:18:28 18 withdraw his plea. It specifically says he has no right
15:18:31 19 to withdraw his plea based on the Court's determination
15:18:34 20 of his criminal history category. So, while that said
15:18:38 21 the Court's determination, not the PSR's, I would argue
15:18:41 22 it ultimately would be the same result. Furthermore,
15:18:44 23 the Second Circuit has recognized, and this is a case
15:18:46 24 that I did not put in my papers, but has come across my
15:18:52 25 radar since, is that mistaken predictions about how the

1 USA VS. M. TYO

15:18:56 2 Guidelines will be applied generally provide no basis
15:19:00 3 for the withdrawal of a guilty plea, either. And that
15:19:03 4 is *United States vs. Sweeney*, the cite is 878 F. 2d 68,
15:19:09 5 at page 70, Second Circuit 1989.

15:19:14 6 So, Judge, in addition to all of the reasons
15:19:16 7 stated by the Court during today's proceedings, I argue
15:19:21 8 that a careful review of the plea colloquy shows the
15:19:24 9 Court clearly ensured the defendant was entering the
15:19:27 10 plea knowingly, voluntarily of his own free will, that
15:19:30 11 he was not threatened or coerced, that he was given an
15:19:35 12 opportunity to air grievances with his attorney. That
15:19:39 13 all establishes his new claims are without merit. For
15:19:43 14 the reasons the Court mentioned, the defendant has not
15:19:46 15 mentioned a fair and just reason to withdraw his plea,
15:19:49 16 therefore his motion should be denied without merit.

15:19:57 17 THE COURT: And Mr. Scibetta, Ms. Hartford
15:19:59 18 mentioned this, and it was set forth to some extent in
15:20:03 19 her papers, and I guess I'm focusing on what I call the
15:20:06 20 Rule 11 colloquy, and I remember this proceeding pretty
15:20:10 21 well, this one is pleading guilty to several bank
15:20:17 22 robberies. And I reviewed the transcripts, and we went
15:20:25 23 up this one side and down the other in terms of what Mr.
15:20:29 24 Tyo's rights were, that he didn't have to plead, we went
15:20:32 25 through the factual basis of the plea, and gave him a

1 USA VS. M. TYO

15:20:36 2 chance to indicate if there were any problems with his
15:20:39 3 lawyer. Pretty much everything Mr. Tyo now says and
15:20:43 4 everything that is suggested in your motion, Mr.
15:20:48 5 Sciabetta, it's just contrary to what was said under
15:20:51 6 oath when we had our plea proceeding. And I think the
15:20:56 7 Second Circuit says, you know, when you say A under oath
15:21:03 8 at the plea proceeding, a month or two or six or ten
15:21:06 9 months later, you can't say B or something different.
15:21:12 10 So any comment you wish to make relative to that?

15:21:17 11 MR. SCIBETTA: Judge, I've read the
15:21:20 12 colloquy. I have shown it to my client and we discussed
15:21:23 13 it, rather. I did obtain a copy of that. Again, I was
15:21:28 14 not there at the time, but it looks like a standard well
15:21:32 15 executed plea at that point and colloquy. I don't think
15:21:36 16 that is a dispositive issue. I think the dispositive
15:21:39 17 issue however is the coercion that was taking place
15:21:43 18 behind the scenes between the attorney and client.
15:21:46 19 Considering that a client is incarcerated and has
15:21:48 20 limited access to any individuals, especially during
15:21:51 21 times of Covid, let alone on a federal matter. And my
15:21:57 22 client was, according to him, conversations we've had,
15:22:01 23 felt as if he had been abandoned, and felt as if he had
15:22:07 24 been betrayed, and, actually, out and out felt as if he
15:22:10 25 was coerced or arm twisted into taking the plea, and

1 USA VS. M. TYO

15:22:14 2 that is his position.

15:22:16 3 THE COURT: All right. This is a client,
15:22:18 4 also, that has a high school degree, and, I guess,
15:22:24 5 didn't completely finish college, but had many college
15:22:28 6 courses, so it's an individual that is not -- not -- has
15:22:32 7 some intelligence. All right.

15:22:35 8 Well, Mr. Tyo, generally, you have a lawyer,
15:22:39 9 the lawyer speaks to the Court. If you wish to add
15:22:47 10 anything, I don't know, maybe your lawyer doesn't want
15:22:50 11 you to, but, Mr. Sciabetta, if Mr. Tyo wants to say
15:22:55 12 anything, do you have any objection to that or would you
15:22:58 13 want to talk to him privately?

15:23:00 14 MR. SCIBETTA: Considering the nature of the
15:23:02 15 proceeding and the history, I'm going to defer and if he
15:23:08 16 feels that he can impart or explain in better detail
15:23:11 17 what transpired, then, no, I have no objection.

15:23:16 18 THE COURT: Anything you want to say, Mr.
15:23:18 19 Tyo?

15:23:18 20 THE DEFENDANT: Yes, your Honor. Is this
15:23:20 21 decision being decided right now?

15:23:22 22 THE COURT: I can't hear you.

15:23:24 23 THE DEFENDANT: Is this being decided right
15:23:28 24 now? Is there going to be an official decision for this
15:23:32 25 right now?

1 USA VS. M. TYO

15:23:33 2 THE COURT: Not right now, no. As I told
15:23:35 3 you before, I'm going to think about what the parties
15:23:38 4 have said, and I will write something in a decision
15:23:44 5 which will be sent to you and your lawyer.

15:23:47 6 THE DEFENDANT: I guess I would like to add,
15:23:50 7 I just know in the plea agreement that I took over Zoom
15:23:55 8 where all those -- where I like admitted to everything,
15:23:59 9 where I took a regular plea. My face wasn't on the
15:24:03 10 actual plea agreement, it wasn't on the Zoom. I don't
15:24:06 11 know if that has any basis for taking the plea back, but
15:24:14 12 I don't know how standard taking a plea over Zoom is,
15:24:17 13 especially with the Covid situation that we had the last
15:24:21 14 couple of years.

15:24:21 15 THE COURT: It's gotten a lot more standard,
15:24:26 16 and it's not so much how you appear on Zoom, it's what
15:24:30 17 you say on it. But, go ahead, I didn't mean to
15:24:34 18 interrupt you.

15:24:39 19 THE DEFENDANT: I'm not exactly sure what
15:24:41 20 the motion entailed that you received, because I sent
15:24:45 21 him, my lawyer, the reasons that I thought, and he
15:24:48 22 detailed that fairly for pointedly, but I don't know
15:24:52 23 exactly what was put, and it's hard to articulate 100
15:24:58 24 percent correctly. I guess if this is my last, I feel
15:25:05 25 that my old lawyer pretty much didn't give me another

1 USA VS. M. TYO

15:25:09 2 alternative besides the plea agreement that was at hand.

15:25:13 3 And, like I said a couple different times, like, if I

15:25:15 4 wasn't going to take the plea agreement, right before I

15:25:20 5 initially said I would take the plea, he said he was

15:25:22 6 going to send me a separate medical facility for a

15:25:28 7 medical evaluation. And I didn't sign the plea

15:25:28 8 agreement for the longest time because I did not feel

15:25:31 9 good about the plea agreement, I did not wan to take it.

15:25:31 10 That is why there was such a lapse of time between me on

15:25:34 11 the Zoom and then actually signing the plea agreement.

15:25:37 12 It was like six months or something to that degree. So,

15:25:41 13 right before, after I signed it, before I signed the

15:25:45 14 papers, the threat was brought up again. And I feel

15:25:48 15 like that is cause to take it back. I mean, I'm not

15:25:51 16 versed in legal. I didn't get anywhere -- I barely --

15:25:54 17 almost finished for an undergraduate degree, and it took

15:25:58 18 me a long time to do that. I'm not versed in legal

15:26:02 19 jargon. I have no sort of legal degree. So, you know,

15:26:05 20 I would adhere to your knowledge and experience, but

15:26:15 21 that is all I can do. I'm just hoping you can -- at

15:26:20 22 this point, I'm leaving it up to God. If this is

15:26:23 23 supposed to be taken back, I feel I have a just and

15:26:26 24 warranted cause to take it back, and if it's not, then

15:26:29 25 I'm just going to get sentenced, and that is what is

1 USA VS. M. TYO

15:26:32 2 going to happen. I was hoping that you can -- I'm
15:26:35 3 hoping that you can accept it.

15:26:38 4 THE COURT: All right. You understand that
15:26:42 5 when a case starts out, a defendant has a right to plead
15:26:46 6 guilty or plead not guilty. And if you plead not guilty
15:26:52 7 and decide not to take a plea, then the next step is to
15:26:56 8 go to trial.

15:26:59 9 THE DEFENDANT: I would like to do that at
15:27:01 10 this point.

15:27:01 11 THE COURT: I don't know if that is really
15:27:03 12 what you want and if that is in your best interest.
15:27:06 13 That is not for me to decide.

15:27:08 14 THE DEFENDANT: I mean, you've already said
15:27:10 15 be careful what you ask for, so I understand, if you
15:27:13 16 were probably going to advise me, you probably would
15:27:16 17 advise me against doing this.

15:27:18 18 THE COURT: Well I -- I'm not your lawyer.
15:27:21 19 I'm not in a position to advise you. You do whatever
15:27:24 20 you want to do. I don't care. I'll react to whatever
15:27:28 21 you do.

15:27:28 22 So, well, I think, Mr. Tyo, thank you for
15:27:32 23 your comments. They've all been taken by our
15:27:35 24 distinguished court reporter, as has Mr. Scibetta's and
15:27:40 25 Ms. Hartford's. In a matter of this importance or in

1 USA VS. M. TYO

15:27:44 2 many matters, I can decide the case right after the
15:27:50 3 parties speak. But this is a significant matter and I
15:27:55 4 want to make sure that my reasons that are set forth
15:28:00 5 clearly, so I think it's best if I do what is called
15:28:04 6 reserve on the motion, Mr. Tyo, which means I'm going to
15:28:09 7 think about it, I'm going to continue to review the
15:28:12 8 papers, and I will get you a written decision as soon as
15:28:17 9 I can.

15:28:19 10 I guess, Mr. Sciabetta, if it should come to
15:28:25 11 pass that I deny your motion and Mr. Tyo's motion, the
15:28:32 12 next step would be sentencing. And, Mr. Ciccone, the
15:28:36 13 prior attorney did file papers already, requested a
15:28:42 14 non-Guideline sentence and there was some material
15:28:45 15 submitted on Mr. Tyo's behalf to consider sort of an
15:28:49 16 alternative sentence. But, I guess my question is, if
15:28:56 17 you know today, whether you think you would be wanting
15:29:00 18 to file additional sentencing material. If you're not
15:29:02 19 sure, that's fine. We can broach this when the Court
15:29:09 20 enters its decision.

15:29:10 21 MR. SCIBETTA: Judge, I think it would be
15:29:12 22 prudent to review, which I have not done, that
15:29:16 23 information with my client. I've reviewed it all and
15:29:18 24 I'm familiar with what was in the sentencing memorandum
15:29:22 25 from Mr. Ciccone, but I have not sat down with my client

1 USA VS. M. TYO

15:29:25 2 to make sure that considering his allegations that their
15:29:28 3 relationship had broken down, I think it would be
15:29:31 4 prudent to sit down with him and make sure what is
15:29:33 5 contained in that memorandum is what he wanted in there,
15:29:36 6 and that there, with the time that has gone back that
15:29:41 7 there isn't anything we should add in there. I would
15:29:44 8 like a little additional time.

15:29:47 9 THE COURT: That is certainly very fair and
15:29:49 10 reasonable. If it comes to pass that I need to deny the
15:29:53 11 motion, I'll ask you how much time you need and we'll
15:29:57 12 certainly give you that time.

15:29:59 13 MR. SCIBETTA: Thank you.

15:30:00 14 THE COURT: And the government can respond
15:30:03 15 if they are inclined. All right. Thank you all for
15:30:07 16 your presentation today. I'll try and get you a
15:30:10 17 decision as soon as I can consistent with the other
15:30:16 18 court matters that I have. So I will adjourn and
15:30:22 19 everybody stay healthy and we'll get you a decision
15:30:25 20 promptly.

15:30:26 21 THE DEFENDANT: Thank you, your Honor.

15:30:27 22 MR. SCIBETTA: Thank you.

15:30:28 23 MS. HARTFORD: Thanks, Judge.

24

25

* * *

CERTIFICATE OF REPORTER

5 I certify that the foregoing is a correct transcript
6 of the record of proceedings in the above-entitled
7 matter.

9 S/ Karen J. Clark, RPR

Official Court Reporter